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Message Text

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E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LOS CONFERENCE - MAY 4-5 HIGHLIGHTS

BEGIN SUMMARY: NO MEETINGS WERE HELD ON MAY 4 OTHER THAN KOH GROUP (NG-2) REPORTED BELOW. PLENARY BEGAN DEBATE ON THE PREAMBLE AND FINAL CLAUSES. NG-2 CHAIRMAN KOH WILL SOON CIRCULATE A COMPROMISE PAPER ON FINANCIAL ARRANGEMENTS. NEGOTIATING GROUP 7 CONDUCTED A STERILE DEBATE ON EQUITABLE PRINCIPLES OF DELIMITATION. SUBSTANTIAL PROGRESS WAS MADE BY THE COASTAL STATES AND LL/GDS ON "LIMITATIONS ON APPLICABILITY" OF CDS IN THE EZ. END SUMMARY.

1. THE PRESIDENT BEGAN THE PLENARY DEBATE ON THE PREAMBLE AND FINAL CLAUSES WITH THE REQUEST THAT IT BE LIMITED TO THOSE CONTAINED IN THE ICNT. THIS WOULD HAVE EXCLUDED DISCUSSION OF RESERVATIONS AND OF THE RELATION OF THE LOS CONVENTION TO TREATIES. THE PRESIDENT'S REQUEST WAS HONORED IN THE BREACH AS PERU SPOKE OUT GENERALLY AGAINST RESERVATIONS. AUSTRIA, ON BEHALF OF THE LL/GDS, STATED THAT NO RESERVATIONS SHOULD BE
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PERMITTED. NO STATE SUPPORTED A LIBERAL RESERVATIONS POLICY; BUT SOME, INCLUDING YUGOSLAVIA AND ECUADOR, FELT THAT SOME SPECIFIC CLAUSES MIGHT BE MADE THE SUBJECT OF RESERVATIONS. SEVERAL DELEGATES MADE GENERAL LEGAL STATEMENTS ON THE RELATION BETWEEN THE LOS CONVEN-TION AND OTHERS. PERU, FOR EXAMPLE, EXPRESSED THE OPINION THAT THIS CONVENTION PREEMPTED THE 1958 LOS

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CONVENTIONS. ECUADOR, BY CONTRAST, FELT THAT THE 1958
CONVENTIONS WOULD CONTINUE IN FORCE EXCEPT TO THE
EXTENT THAT THERE WERE CLEAR CONFLICTS.
2. MANY DELEGATIONS FELT THAT THE ENTIRE DEBATE WAS
PREMATURE. IN THEIR VIEW, DISCUSSION OF ALL BUT THE
MOST FORMAL AND NONCONTROVERSIAL OF THE FINAL CLAUSES
SHOULD BE DELAYED UNTIL THE SUBSTANTIVE TEXT IS AGREED.
THE EASTERN EUROPEAN COUNTRIES, LED BY THE SOVIET UNION,
INTERVENED IN FORCE IN SUPPORT OF THIS POSITION.
3. THE MOST SPIRITED DISCUSSION WAS ADDRESSED TO THE
QUESTION OF WHO SHOULD BE PERMITTED TO SIGN AND TO BECOME
A PARTY TO THE CONVENTION. NEW ZEALAND INTRODUCED A
LETTER TO THE SECRETARY-GENERAL IN WHICH IT AND FOUR
OTHER PACIFIC ENTITIES ADVOCATED THE RIGHT OF CERTAIN
NON-SELF-GOVERNING TERRITORIES WITH COMPETENCE OVER
MARINE AND FOREIGN AFFAIRS TO BECOME CONTRACTING PARTIES.
THIS SET THE STAGE FOR THE REPRESENTATIVE OF THE TRUST
TERRITORY OF THE PACIFIC ISLANDS (TTPI) TO OUTLINE WHY
THE TTPI SHOULD BE PERMITTED TO ADHERE TO THE CONVENTION
(FULL TEXT SENT SEPTEL). OTHER DELEGATIONS, INCLUDING
CZECHOSLOVAKIA, ECUADOR AND IRAQ, EXTENDED THIS POINT
TO INCLUDE NATIONAL LIBERATION MOVEMENTS AMONG
THE ENTITIES WHICH SHOULD BE ALLOWED TO SIGN AND RATIFY
OR TO ACCEDE TO THE CONVENTION. ALGERIA, EGYPT, LIBYA
AND SYRIA SUPPORTED THIS THEME. DENMARK, SPEAKING FOR
THE EUROPEAN ECONOMIC COMMUNITY (EEC) EMPHASIZED THE
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MEMBER STATES' CONTENTION THAT ONLY THE EEC ITSELF
COULD PROPERLY BECOME A PARTY AS TO PARTS OF THE CONVEN-
TION RELATING TO AREAS OF COMMUNITY COMPETENCE. IF THE
EEC WERE NOT PERMITTED TO BE A PARTY IN ITS OWN RIGHT,
THE MEMBER STATES WOULD BE PROHIBITED UNDER THE
TREATY OF ROME FROM BECOMING PARTIES ON AN INDIVIDUAL
BASIS, AT LEAST AS FAR AS THE ECONOMIC PROVISIONS OF
THE CONVENTION WERE CONCERNED. BYELORUSSIAN SSR,
CZECHOSLOVAKIA, AND YUGOSLAVIA ALL OPPOSED THE EEC REQUEST.
BYELORUSSIAN SSR QUESTIONED HOW ONE COULD DISTINGUISH
BETWEEN THE EEC AND OTHER INTERNATIONAL ORGANIZATIONS
WITH MARINE COMPETENCE. JAPAN, ADDRESSING THE QUESTION
OF ARTICLE 300 OF THE ICNT (ENTRY INTO FORCE), SUGGESTED
THAT APPROXIMATELY 37 STATES OR 1/4 OF THE CONFERENCE
PARTICIPANTS WOULD BE AN APPROPRIATE NUMBER TO ENSURE
EARLY ENTRY INTO FORCE OF THE TREATY.

4. THE G-17 (MARITIME STATES) WAS CONVENED BY THE U.K.
TO CONSIDER COMMITTEE THREE AMENDMENTS. THE U.S.
(OXMAN) MADE A STRONG INTERVENTION SEEKING SUPPORT
FOR THE U.S. PROPOSALS, BUT THIS DREW LESS THAN ENTHU-
SIASTIC BACKING. THE USSR COULD NOT ACCEPT CHANGES TO

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ARTICLE 221(6) (ENFORCEMENT IN THE EEZ) INVOLVING DELETION
OF THE WORD MAJOR OR CHANGES TO ARTICLE 229 (PREEMPTION).
THE SOVIETS (AND POLAND) EXPRESSED A WILLINGNESS TO
NEGOTIATE PROVIDING THAT NO ADDITIONAL AMENDMENTS WOULD
BE FORTHCOMING. GREECE WAS WILLING TO SUPPORT THE U.S.
IN RETURN FOR A PROPOSAL MORE FAVORABLE TO MARITIME STATE
INTERESTS (SUCH AS THE SOVIET SUGGESTION TO HAVE THE
SAFEGUARDS APPLY TO ALL ENFORCEMENT PROCEEDINGS
AGAINST VESSELS AND NOT JUST THOSE RELATED TO POLLUTION).
SWEDEN, FINLAND, BELGIUM AND THE NETHERLANDS ALL
INDICATED WILLINGNESS TO NEGOTIATE BUT WANTED TIME TO
CONSIDER THE U.S. IDEAS. THE FRG INDICATED IT COULD
ACCEPT MOST OF THE U.S. INITIATIVES BUT NOT THE ADDITION

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OF THE EXPRESS AUTHORIZATION FOR ARREST OF THE VESSEL
IN THE EEZ IN ARTICLE 221(6). THE U.K. INDICATED SOME
FLEXIBILITY WITH RESPECT TO THE PROPOSALS BUT THERE WERE
LIMITS. THE U.K. IS TO CALL ANOTHER G-17 MEETING
EARLY NEXT WEEK. IT IS CLEAR THAT LITTLE PROGRESS WAS
MADE IN ELICITING GROUP SUPPORT NOR COULD MUCH HELP BE
EXPECTED FROM THE G-17, ABSENT COOPERATION BY THE U.K. AND
USSR.
5. ON MAY 4, THE KOH TECHNICAL GROUP ON FINANCIAL ARRANGE-
MENTS DISCUSSED THE SOVIET SUGGESTION OF A STRAIGHT
ROYALTY SYSTEM OF 7.5 PERCENT OF GROSS RECEIPTS. THE
U.S. OPPOSED THIS SYSTEM AS IT DID NOT ADEQUATELY RELATE
TO THE SHARING OF RISK AND PRODUCTION OF PROFITS. UNDER
THIS ARRANGEMENT THE AUTHORITY AND THE CONTRACTOR HAVE
LESS OF A COMMON INTEREST THAN THROUGH PROFIT SHARING.

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AUSTRALIA SUPPORTED THE SOVIET CONCEPT AND MEMBERS OF THE GROUP OF 77 ADVOCATED ROYALTY PERCENTAGES RANGING FROM 25 TO 63 PERCENT. THE U.S. SUPPORTED A COMBINATION ROYALTY AND PROFIT SHARING PLAN IN WHICH 20 PERCENT OF THE PROFITS FROM SEABED MINING ARE ATTRIBUTABLE TO ACTIVITIES IN THE AREA (BECAUSE ONLY 20 PERCENT OF THE TOTAL INVESTMENT IN SEABED MINING IS ALLOCATED TO ACTI-
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VITIES IN THE AREA). THE G-77 REPS WERE NOT SATISFIED WITH THIS PERCENTAGE AND PROPOSED THAT THE PERCENTAGE ATTRIBUTABLE TO ACTIVITIES IN THE AREA RANGE FROM 25 TO 100 PERCENT OF THE PROFITS ON FINISHED METALS.
6. (NG-2) KOH EXPERTS' WORKING GROUP CONTINUED ITS DISCUSSION OF FINANCIAL ARRANGEMENT BETWEEN CONTRACTORS AND THE AUTHORITY. THE G-77 BELIEVES THAT THE CONTRACTORS SHOULD BEAR A MAJOR FINANCIAL BURDEN WHEREAS THE INDUSTRIALIZED COUNTRIES MAINTAIN THAT FINANCIAL ARRANGEMENTS MUST BE SUFFICIENTLY EQUITABLE TO ATTRACT INVESTORS. KOH IS EXPECTED TO CIRCULATE A PAPER WHICH WILL ATTEMPT TO COMPROMISE THESE VIEWS.

7. THE POTENTIAL FIREWORKS EXPECTED IN NG-5 A RESULT OF A CHALLENGE TO MANNER'S CHAIRMANSHIP BY THE GROUP OF 28 DID NOT MATERIALIZE IN THE MAY 5-6 MEETINGS. INSTEAD, THE GROUP OF 28 (G-28) (WHO SUPPORT "EQUITABLE PRINCIPLES" DELIMITATION) AGREED TO CONTINUE WORK IN THE NG-7 WITH MANNER AS CHAIRMAN, PROVIDING THAT NEGOTIATIONS CENTERED ONLY ON THE ICNT AND OTHER WORKING DOCUMENTS EXCEPT MANNER'S DELIMITATION PROPOSAL. THE STERILE DEBATE BETWEEN THE TWO CAMPS - THOSE WHO WANT DELIMITATION (OF MARITIME BOUNDARIES BETWEEN OPPOSITE AND ADJACENT STATES) BASED ON "EQUITABLE PRINCIPLES" AND THOSE WHO FAVOR THE USE OF A "MEDIAN LINE" PRODUCED NO MOVEMENT TOWARD SYNTHESIS IN THE MEETINGS HELD ON MAY 4-5. ON MAY 5, THE G-28 TORPEDOED MANNER'S SUGGESTION TO CREATE A SMALL NEGOTIATING GROUP OF 18 AND THIS APPEARS TO HAVE FORECLOSED ANY RAPID MOVEMENT TOWARD A RESOLUTION OF THE DIFFERENCES.

8. BOTH THE COASTAL STATES AND THE LL/GDS ARRIVED IN A CONCILIATORY FRAME OF MIND FOR THE MAY 4 MEETING OF THE
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SMALL WORKING GROUP OF NEGOTIATING GROUP 5. THE RESULT WAS A WORKMANLIKE SESSION WHICH MADE SUBSTANTIAL PRO-

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GRESS. THE COASTAL STATES PRESENTED SEVERAL COMPROMISE TEXTS WHICH, WITH MINOR MODIFICATIONS, WERE ACCEPTED BY THE LL/GDS. AGREEMENT WAS REACHED ON THE FOLLOWING PORTIONS OF AN ARTICLE 296(4)(B):

"WHEN NO SETTLEMENT HAS BEEN REACHED BY RECOURSE TO THE PROVISIONS OF SECTION 1 OF PART XV OF THIS CONVENTION, A DISPUTE SHALL, NOTWITHSTANDING PARAGRAPH 3 OF ARTICLE 284, BE SUBMITTED TO THE CONCILIATION PROCEDURE PROVIDED FOR IN ANNEX IV, AT THE REQUEST OF ANY PARTY TO THE DISPUTE, WHEN IT IS ALLEGED THAT:

(I) A COASTAL STATE HAS MANIFESTLY FAILED TO COMPLY WITH ITS OBLIGATIONS TO ENSURE THROUGH PROPER CONSERVATION AND MANAGEMENT MEASURES THAT THE MAINTENANCE OF THE LIVING RESOURCES OF THE EXCLUSIVE ECONOMIC ZONE IS NOT SERIOUSLY ENDANGERED;

(II) A COASTAL STATE HAS ARBITRARILY REFUSED TO DETERMINE, UPON THE REQUEST OF ANOTHER STATE, THE ALLOWABLE CATCH AND ITS CAPACITY TO HARVEST THE LIVING RESOURCES WITH RESPECT TO STOCKS WHICH THAT OTHER STATE IS INTERESTED IN FISHING;...

(V) THERE IS A DISPUTE CONCERNING THE INTERPRETATION OR APPLICATION OF ANY AGREEMENT CONCLUDED UNDER ARTICLES 69 AND 70, UNLESS OTHERWISE DECIDED BY THE PARTIES."

THE ONLY SERIOUSLY DISCORDANT NOTE WAS THE CONTINUED INSISTENCE OF JAPAN AND THE SOVIET UNION THAT THERE BE SOME QUESTIONS OF ALLOCATION SUBMISSIBLE TO BINDING ARBITRATION. THERE WAS VIRTUALLY NO ACTIVE SUPPORT FOR PROPOSALS BY THE TWO DELEGATIONS ALONG THESE LINES.

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9. AT THE END OF THE DAY THERE STILL REMAINED TWO THORNY QUESTIONS: DISPUTES RELATING TO THE FAILURE OR REFUSAL OF A COASTAL STATE TO ALLOCATE SURPLUS TO ANOTHER STATE, AND THOSE CONCERNING THE PERMISSIBILITY OF TERMS AND CONDITIONS ESTABLISHED BY THE COASTAL STATE FOR FISHING WITHIN ITS ZONE.

10. NOT ONLY DID THE MAY 5 MEETING OF THE WORKING GROUP FAIL TO SOLVE EITHER OF THESE OUTSTANDING ISSUES, BUT THE COASTAL STATES ACTUALLY WITHDREW THEIR ACCEPTANCE OF SUBPARAGRAPH (B)(V). THIS PROVISION AS WELL AS DRAFTS ON THE OTHER TWO POINTS ALL FOUNDERED ON THE SAME ROCK: COASTAL STATE INSISTENCE THAT THE RIGHT TO SET TERMS AND CONDITIONS OF ACCESS WAS AN ABSOLUTE AND UNASSAILABLE DISCRETIONARY POWER. THUS, THEY ARGUED, A STATE WHICH HAD REFUSED AN OFFER OF ACCESS, ON WHATEVER TERMS IT WAS MADE, SHOULD HAVE NO RIGHT TO GO TO CONCILIATION. REGULATIONS PROMULGATING SUCH TERMS AND CONDITIONS SHOULD NOT BE SUBJECT TO CONCILIATION. AGREEMENTS INCORPORATING THEM SHOULD NOT BE SUBJECT TO REVIEW, SINCE THE POWER TO INTERPRET AND APPLY INCLUDES
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THE POWER TO QUESTION.

11. NORWAY WAS THE MOST ACTIVE, AND IN MOST CASES THE SOLE DEFENDER OF THE EXTREME COASTAL STATE POSITION. THE ONLY OTHER COASTAL STATE WHICH SPOKE WITH ANY REGULARITY WAS MEXICO, AND IT USUALLY INTERVENED IN A CONSTRUCTIVE AND CONCILIATORY FASHION. THE GROUP ADJOURNED FOR THE WEEKEND WITH MUTUAL PROMISES TO RETURN ON MAY 8 WITH NEW DRAFTS. RICHARDSON

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